(4) termination of the employer's operation;

(5) denial of the right to conduct any further business on the Fort Apache Indian Reservation;

(6) payment of back pay or other relief in order to correct any harm done to aggrieved Indians; and

(7) the summary removal of employees hired in violation of the White Mountain Apache Tribe's employment rights requirements.

White Mountain Apache Labor Code 2.7.

C. TOLEDO v. BASHAS' INC.

On December 28, 2004, Harrison Toledo, an enrolled member of the Navajo Nation, filed a complaint with the Navajo Nation Labor Commission alleging that his employment was terminated in violation of the NPEA. The Commission held an evidentiary hearing on this complaint on March 24, 2005. In an order dated July 12, 2005, the Commission upheld the termination, but ordered Bashas' to comply with the NPEA and criticized Bashas' for not having a written Affirmative Action Plan. (The Commission excused this deficiency noting that of 370 Bashas' employees on the Navajo Nation, 365 were Navajo.)

D. THE NAVAJO NATION OFFICE OF NAVAJO LABOR RELATIONS

The Navajo Nation Office of Navajo Labor Relations recently required Bashas' to fully comply with the NPEA by implementing and following Affirmative Action Plans that include the preference for Navajos in hiring and "include and specify a Navajo employment preference policy statement in all job announcements and advertisements." NPEA, 15 Nav. Nation Code §604 (B) (1).

E. E.E.O.C. v. BASHAS' INC.

On August 17, 2005, the EEOC filed an action against Bashas' in the United States District Court for the District of Arizona. The EEOC also named the Navajo Nation as a Defendant, pursuant to Rule 19(a) of the Federal Rules of Civil Procedure. EEOC v. Bashas' is currently stayed, pending the outcome of this proceeding.

The EEOC alleges Bashas' violated Title VII by giving hiring preferences to members of the Navajo Nation. The EEOC alleges that such preferences violate federal law because Title VII permits only preferences to Native Americans and not members of a specific tribe. The basis of the EEOC's lawsuit is Bashas' alleged decision not to hire Randy Honahni ("Honahni") and Dale Lucero ("Lucero") because neither individual was a member of the Navajo Nation.

Over five years ago, on August 27, 2000, Honahni filed an EEOC Charge of Discrimination ("the Honahni Charge"), alleging that Bashas' discriminated against him on the basis of national origin by giving hiring preferences to members of the Navajo Nation. The EEOC issued a final Determination on September 21, 2001 that Bashas' violated Title VII. Efforts between the EEOC and Bashas' to conciliate the matter failed on December 20, 2001. The EEOC informed Bashas', "No further efforts to conciliate this case will be made by the EEOC. Accordingly, we are at this time reviewing the case for possible litigation."

On December 5, 2001, Lucero filed an EEOC Charge of Discrimination ("the Lucero Charge"). Lucero, like Honahni, alleged Bashas' discriminated against him on the basis of national origin discrimination by giving hiring preferences to members of the Navajo Nation. On February 25, 2003, the EEOC issued a final determination on the Lucero Charge. On June 11, 2003, conciliation efforts failed. The EEOC notified Bashas', "No further efforts to conciliate this case will be made by the EEOC. Accordingly, we are at this time reviewing this case for possible litigation."

II. THE COURT SHOULD GRANT THE WRIT TO RESOLVE WHETHER THE EEOC MAY JOIN A PARTY UNDER RULE 19 WHO IS PROHIBITED FROM SUING DIRECTLY

The EEOC has mounted a vigorous campaign against preference laws by suing employers conducting business on tribal lands. The EEOC unsuccessfully attempted to intervene in *Dawavendewa v. Salt River Project Agr. Improvement & Power Dist.*, 276 F.3d 1150 (9th Cir. 2002), has brought the instant matter against Peabody Coal, and now has brought an identical action against Bashas' seeking to change Native American policies endorsed by the Bureau of Indian Affairs, for employers doing business with these sovereign nations.

Bashas' and SRP urge this Court to accept review of this case because the EEOC disagrees with the laws of another nation and is attempting improperly to use Rule 19 to accomplish its ends. Joining a sovereign nation with a private employer will not resolve the irreconcilable conflict between federal law and the laws of a sovereign nation. The Attorney General, as a politically accountable office, would more likely strive to resolve this dispute through sovereign to sovereign negotiations rather than suing a private entity, acting in good faith, for punitive damages as a means for solving a perceived wrong with the laws of another nation.

Bashas' and SRP encourage this Court to review this conflict and resolve whether the EEOC's use of Rule 19 is appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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